



NSTAR Electric & Gas Corporation, 800 Boylston Street, P1700, Boston, MA 02199

Paul D. Vaitkus
Vice President – Energy Supply and Transmission

Phone: 617-424-2053
Fax: 617-424-2701
E-mail: paul_vaitkus@nstaronline.com

June 14, 2001

Hand Delivered

Mary L. Cottrell, Secretary
Department of Telecommunications and Energy
One South Station – 2nd Flr.
Boston, MA 02110

Re: Competitive Market Initiatives

Dear Secretary Cottrell:

NSTAR Electric appreciates the opportunity to submit additional comments concerning issues raised at the Department's May 31, 2001 Technical Conference on initiatives to stimulate the competitive retail electricity market. For the reasons discussed in Chairman Connelly's opening remarks and echoed in the comments of Thomas May and other conference participants, this is clearly a timely and important subject of inquiry. We applaud the Department for undertaking these efforts and are committed to working with the Department and other interested parties to achieve a robust and successful competitive market that will benefit our customers.

As the industry approaches the midpoint of the seven-year transition period envisioned by the Massachusetts Electric Restructuring Act, it is appropriate to look at the status of restructuring efforts and consider both successes and areas in which improvements are required. The major successes of industry restructuring are apparent and have been documented fully over the past several years. Of primary importance is the fact that electric utilities have largely divested their generation facilities and have successfully and cooperatively transferred themselves into electric delivery companies. The divestiture of utility generation assets has both created value for customers (in the form of stranded-cost mitigation) and has paved the way for a competitive market for electricity supplies. The infrastructure needed to support retail choice and open competition has been put into place. The Department (through the Energy Facilities Siting Board) has approved the construction of new sources of generation, which should facilitate the development of adequate supplies at reasonable prices. The Department has also avoided the mistakes of other jurisdictions by

permitting the pass-through of costs incurred in providing default service and standard offer service and thus, addressing the accumulation of deferrals.

The two related areas that have not advanced as quickly as anticipated are the development of an open and functioning wholesale market and the pace of retail competition. However, NSTAR Electric believes that it is too early in the process to conclude that there are intractable problems that will require a significant overhaul of the existing legislative or regulatory structure put into place by the Restructuring Act. Instead, important decisions relating to wholesale markets must be faced by ISO New England and the Federal Energy Regulatory Commission. Although the success of retail competition depends, in large part, on the resolution of wholesale issues, it will be possible for market participants to facilitate retail competition by continuing to eliminate remaining barriers facing retail marketers. The industry should work hard to identify and reduce market barriers that have inhibited the development of retail competition in Massachusetts.

In considering why marketers have been unable to make significant inroads with retail customers, it must be recognized that retailers must generally “win” customers who are presently taking either standard offer or default service. As discussed at the conference, the price for standard offer service is presently set below the market price of electricity in order to ensure that customers maintain the Restructuring Act’s 15 percent rate-reduction requirement. However, an ever-increasing percentage of retail customers are on default service, which is set at prices that reflect the actual market cost of power procured by utilities. More than 25 percent of NSTAR Electric’s retail customers (and a similar percentage of its retail load) are served through default service, and it is the lack of competition for these customers that was the focus of the conference.

The comments at the conference offered two general themes to explain the slow pace of retail competition for default service customers. One theme is that the price of default service is too low for marketers to be able to compete effectively. The second theme is that the cost of marketing is too high in relation to the small profit margins available for retail sales. Regarding the first issue, NSTAR Electric believes that, because default service rates reflect the average cost of power for each class of customer, retail service providers are facing realistic price signals as they endeavor to market to customers.¹ Although it has been suggested that the Department consider increasing the price of default service, as described in more detail below, the Restructuring Act requires that the price be set at the market price based on the results of a competitive bidding process. M.G.L. c. 164, § 1B(d).

NSTAR Electric recognizes that the cost to market to default service customers presents a practical impediment to the development of a competitive retail market. Although there is some reason for optimism that competitive market participation rates will increase as a result of normal market forces and the provision of information to potential market participants, it is clear that pro-active initiatives by utility companies can help facilitate the

¹ In fact, since the same default service rates apply to all customers in a class of service, retail marketers could increase their profit margins by supplying to those customers whose load profiles make them less costly to serve.

process. NSTAR Electric is committed to taking actions that will encourage competition, consistent with the Restructuring Act and the interests of retail customers.

It is this concept that underlies the development of NSTAR Electric's "Matchmaker" program, as well as some of the efforts and initiatives of the other distribution companies that were discussed during the conference. Among those initiatives were use of targeted mailings, facilitated meetings with customers and suppliers, provision of default service customer names and addresses or other information to suppliers (with appropriate customer privacy protections), and use of internet-, or other-, based exchange facilities. It is our perspective that all of these efforts are likely to be of some value, with some being of more value to particular customers or suppliers than others. In addition, with recent changes in the price structure for default service, it would appear that the incentives should be present and the ground should be fertile for transactions that could be of benefit to both buyers and sellers.

At the Technical Conference NSTAR Electric announced the establishment of its Matchmaker program. Under this pilot program NSTAR Electric will focus first upon its 200 largest Commercial and Industrial customers who are on default service with an objective of serving as a catalyst for competitive market transactions with active suppliers. In order to limit contact with suppliers who are not actually in a position to provide competitive supplier services, NSTAR Electric intends to include only registered suppliers who have successfully completed Electronic Data Interchange testing, or are in the queue to complete such testing. Attached to this letter is a copy of the handout we provided at the conference which outlines the objectives of the Matchmaker program along with a brief program description. We intend to monitor the effectiveness of the Matchmaker program so that we can be in a position to modify it as necessary and to report to the Department on its effectiveness.

As noted previously the conference attracted a large number of participants with diverse viewpoints and suggestions, much of which was reflective of the vigorous debate and discussion that surrounded the original legislation and regulatory orders that lead to electric industry restructuring. We will not try to comment upon all of the issues raised, some of which raise very valid concerns with which we agree.² We would, however, like to briefly address two issues that were the subject of considerable discussion at the conference and that are central to the success of the competitive retail market and efforts to stimulate that market. The first issue is price, as it relates to the regulated default service alternative to the competitive market. The second issue is customer privacy, as it relates to the provision of customer information to potential suppliers.

Concerning the issue of price for regulated default service, it is clear that the Department is constrained by the provision of the Restructuring Act, M.G.L. c. 164, § 1B(d), which dictates a supply that is procured through competitive bidding and which is priced at a

² Our failure to address any specific issue that was raised should not be construed as either agreement or disagreement at this juncture. A number of ideas, such as alteration of the priority of payment rules or changes in the procedures for signature verification, may have validity, but will require some additional explanation in order to be fully evaluated.

rate that shall not exceed the average monthly market price for electricity. Moreover, the Department in its order in D.T.E. 99-60-B has already had occasion to consider how that price should be determined, and specifically ruled on the issue of whether certain additional “administrative” costs should be added to the cost of that supply in order to convert what is effectively a “wholesale” price into a “retail” price. D.T.E. 99-60-B, pp. 20-21. A number of participants, particularly among the group of suppliers and brokers, noted that such a price set a difficult hurdle for them to compete against, since their competitive offerings must of necessity include administrative overheads for customer acquisition, customer service and other necessary costs. See Transcript, pp. 79-80, 98-101. This position was challenged, however, by various customer representatives who rather understandably objected to efforts that might be directed to raise prices even further, simply to allow competitive suppliers room to profitably compete. See Transcript, pp. 137, 149, 151-152.

On this record NSTAR Electric must confess some recognition of the validity of both of these positions. We recognize that wholesale non-profit purchasing by NSTAR Electric and other distribution companies sets a difficult target for retail suppliers to compete against. In the long run it is our view that the development of a competitive retail market will provide substantial customer benefits including lower prices, an enhanced demand response, and the availability of additional products and services. To address this issue in the short term, a wholesale “adder” has been proposed to the price for default service, however this too raises difficult issues. Raising prices in the near term simply to allow suppliers a profit margin seems to conflict with the restructuring goal of lowering prices. In addition, this step has already been considered by the Department and specifically rejected. Accordingly this is not a step that NSTAR Electric would support at this time.

While obviously not a complete solution to the issue of price competition for all retail segments, the Matchmaker program is intended to foster the development of a competitive market in at least those segments and for those customers where competition can likely provide immediate benefits. NSTAR Electric does have some large customers who are on default service and who have favorable load shapes and other service characteristics that should, based on our own experience in the power markets, make them attractive customers in the competitive supply market and which should also enable them to attract offers on more favorable terms than we are able to procure in our broad fixed-term default service solicitations. Identifying those customers, and their associated load characteristics, is among the types of information that competitive suppliers say they need, see Transcript, pp. 102-105, and is one of those administrative, or customer acquisition, costs that we are in a position to help with. Obviously we consider this as a pilot program which cannot address the needs of all customers, or all suppliers, but we do believe that we can obtain important information and, importantly, lead to at least some successful competitive supply arrangements. One of the considerations that NSTAR Electric is particularly concerned about as it implements the Matchmaker program, and which limits the extent to which we feel we can go in providing customer information to suppliers, is the issue of customer privacy.

Turning to the issue of privacy of customer information, clearly this is a “hot button” issue of public policy. In response to Chairman Connelly’s specific questions on the subject,

and the follow-up questions and comments of other Conference participants, see, e.g., Transcript, pp. 49-52, NSTAR Electric is not able to identify any specific law or regulation that deals directly or specifically with confidentiality of electric utility customer information, or of any specific subsets of that information. Nevertheless there are a number of laws and regulations that address this issue in a general fashion, and there is also a considerable body of litigation, including pending class action cases that concern the release of customer names and addresses.³ NSTAR Electric, along with NSTAR Gas and other NSTAR affiliates, has a specific corporate policy restricting the disclosure of customer or account information only to the customer, or to the Department, absent the customer's written authorization. Finally, it should be noted that the Electric Restructuring Act, M.G.L. c. 164, § 1F(7) authorizes the Department to issue rules and regulations governing, among other things, "the confidentiality of customer records." The Department's "Restructuring" regulations contain a prohibition of the release of a customer's historic usage information without the customer's authorization in writing or through a third party verification process, which in some cases may involve even further customer data such as "date of birth and social security number or other voluntarily submitted information." See 220 C.M.R. 11.05(4). Similarly, the Department's "Standards of Conduct" regulations contain a prohibition on the release of proprietary customer information to an Affiliate without the customer's authorization, but contain no similar restriction on the release of such information to any other person. See 220 C.M.R. 12.03(9). Although there is clearly an intent to provide privacy protection to proprietary customer information, the regulations provide no additional insight on precisely what additional customer information might be deemed proprietary or worthy of privacy protection and what is not worthy of such protection. See Standards of Conduct, D.T.E. 97-65, p. 30 (1998).

Against this backdrop of privacy laws and concerns, NSTAR Electric believes it prudent to proceed very cautiously and without attempting to assume for our customers just what information they would like to have released to third parties without their consent. This is the underlying rationale for the mechanism that we have chosen to utilize in our Matchmaker program so as to preserve the confidentiality of customer names and addresses (as well as usage, credit, or other status information linked to those names and addresses). We do propose the use of certain information on a "blind" basis, but the ultimate decision of whether to release that information linked to a specific customer to any supplier will be up to the customer. While we can understand that this indirect procedure may not be perfect from the standpoint of suppliers, and that ultimately the supplier and the customer will have to deal with one another directly, the Matchmaker program is designed as a means to both accommodate a customer's privacy interest while at the same time generate some real potential for a competitive supply arrangement to come to fruition (and where the available evidence is that not much else has been successful). Clearly this is an issue that we would intend to continue to monitor, since it is the customers' expectations of privacy that we

³ Without performing an exhaustive legal search, reference may be made to M.G.L. c. 214, § 1B which provides that "a person shall have a right against unreasonable, substantial or serious interference with privacy." Section 652A of the Restatement (Second) of Torts provides for a common law cause of action for various theories of invasion of privacy. The case of Weld v. CVS Pharmacy, 1999 Mass. Super. LEXIS 261 (June 1, 1999) brings all of these statutes and theories together, along with other claims, in a class action suit over release of customer data. While a component of this data included pharmaceutical records, which clearly might seem to implicate privacy interests, the court also refused to dismiss privacy claims based simply on the release of names and addresses.

Mary E. Cottrell
Page 6 of 6
June 14, 2001

intend to protect. Within the regulated and restructured electric market those expectations may evolve and differ from customer to customer, and we intend to listen to our customers and monitor the effectiveness of, and responses to, other market development initiatives that may address the privacy issue in a different fashion.

NSTAR Electric appreciates the opportunity to offer these additional comments. If the Department has any questions regarding these comments or wishes further information regarding the Matchmaker program, please feel free to contact me at 617-424-2053.

Sincerely,

Paul D. Vaitkus
Vice President
Energy Supply and Transmission

Attachment



“MATCHMAKER” RETAIL PILOT PROGRAM

KEY OBJECTIVES

Bring the most viable retail transactions to market as expediently as possible and in a manner that is efficient for both retail suppliers and retail customers.

Use NSTAR’s relationship with its retail customers to introduce registered retail suppliers to retail customers.

Make it easier for suppliers to acquire customers by providing them with sufficient information to quickly determine their target market.

Make it easier for customers to pursue energy saving opportunities by providing them with a list of interested suppliers and possibly “indicative” offers.

Preserve the customer’s right to privacy.

Avoid regulatory rule changes.



“MATCHMAKER” RETAIL PILOT PROGRAM

PROGRAM DESCRIPTION

NSTAR provides registered retail suppliers with a data-file containing historical hourly load data for NSTAR’s top 200 default service customers.

- Commercial and Industrial customer data

- Customer identity is masked via a code # assignment.

- Customers with “Late Payment Charges” will be excluded.

- Software will be provided to ease supplier review of the hourly load data.

Suppliers respond with a list of the customers (code #s) of particular interest to them.

Suppliers may also respond with an indicative offer identifying a proposed rate structure, term and other conditions along with an estimate of monthly/annual customer savings.

NSTAR will send expressions of interest and any offers received to the applicable retail customer.

- Summary of offers and savings opportunities

- Supplier contact names and telephone numbers

- Customer code # to convey to suppliers if customer calls.

One week after letters have been forwarded to customers, an NSTAR account executive will follow-up with a phone call to confirm receipt of the letter and to encourage the customer to contact suppliers.

Thirty days later, a second follow-up call will be made to survey customers and document their reaction to the pilot program.

NSTAR will prepare and file a report with MADTE.